IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 9TH JANUARY 2007 / 19TH POUSHA 1928

WP(C).No. 929 of 2007(I)

AGAINST THE ORDER DATED 03/11/2006 IN
CMA.53/2006 & 61/2006 of DISTRICT COURT, THALASSERY
OS.113/2006 of PRL.M.C.,KANNUR
(IA 662 & 1179/2006)
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PETITIONER:
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1. P.K.SHANAVAS, S/O. IBRAHIM,
AGED 25 YEARS, C.C.NO.28/861,
M/S. SHALIMAR PAPER MART, M.A. ROAD,
KANNUR-1.

2. P.K.SHAMEER, S/O. IBRAHIM,
AGED 23 YEARS, C.C.NO.28/861,
M/S. SHALIMAR PAPER MART, M.A.ROAD, KANNUR-1.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS:

KUNNUMBRON YESHODA, W/O. LAKSHMANAN,
AGED 58 YEARS, VEENA NIVAS,
YOGASALA ROAD, TALAP, KANNUR-2.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 929 OF 2007

Dated 9th January 2007

J U D G M E N T

Petitioners are defendants and respondent plaintiff in O.S.113/06 on the file of Munsiff court, Kannur. As per Ext.P5 order, learned Munsiff dismissed I.A.662/06, the application filed by respondent/plaintiff under Order XXXIX Rule 1 of the Code of Civil Procedure and vacated the order of injunction originally granted and allowed I.A.1179/06 filed by petitioners/defendants and directed plaintiff to close down the door opened from her building to the plaint B schedule property. That common order was challenged before District court, Thalassery in C.M.A.53/06 and C.M.A.61/06. Under Ext.P6 order, learned District Judge analysed the documents and found that the disputed B schedule property was not properly identified and till the property is properly identified the dispute regarding ownership of the plaint B schedule property cannot be decided and therefore interfered with Ext.P5 order. Learned

District Judge directed both parties to maintain status quo without effecting the lie of B schedule property till the disposal of suit on merits. Both plaintiffs and defendants were restraining from reducing it into their possession or using B schedule property till disposal of the suit. Parties were directed to remove the goods or articles found in B schedule property with the permission of trial court. Defendants are challenging Ext.P6 order in this petition, filed under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioners were heard.

3. Learned counsel vehemently argued that report submitted by the Commissioner establish that plaint B schedule property forms part of the property belonging to petitioners and it does not form part of property claimed by plaintiff and in such circumstances, Ext.P6 order is to be quashed and Ext.P5 order is to be sustained.

4. On hearing learned counsel appearing for petitioners and going through Exts.P5 and P6 orders, I do not find any infirmity in Ext.P6 order warranting interference in exercise of the extra ordinary jurisdiction of this court under Article 227 of

Constitution of India. Question whether plaint B schedule property forms part of property, belonging to plaintiff or defendants could be decided only after proper identification of the properties. Learned District Judge on analysing the materials, found that with the materials and report of the commissioner it is not possible to finally decide whether plaint B schedule property forms part of the property of plaintiff and defendants. It is in such circumstances, learned District Judge directed parties to maintain status quo and restrained them from materially altering the nature of the property. I do not find any reason to interfere with Ext.P6 order. Learned Munsiff is directed to dispose O.S.113/06, as expeditiously as possible and in any event within six months from the date of receipt of copy of this judgment, untrammelled by any observations in Ext.P5 or P6 orders or this judgment.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.